

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW CINGULAR WIRELESS PCS, LLC,

Plaintiff,

v.

No. 13-cv-1056 JAP/SMV

COUNTY OF BERNALILLO,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL AND FOR SANCTIONS**

THIS MATTER is before the Court on Plaintiff's Motion to Compel and for Sanctions [Doc. 48] ("Motion"), filed on October 28, 2014. Defendant responded on November 12, 2014. [Doc. 53]. Plaintiff replied on November 26, 2014. [Doc. 64]. Having considered the briefing and relevant law, and being otherwise fully advised in the premises, the Court finds that Defendant's Motion is not well-taken and will therefore be DENIED.

Plaintiff moves to compel Defendant to produce the transcript from the September 24, 2013 meeting of the Bernalillo County Commission. [Doc. 48] at 1. Plaintiff requests mandatory exclusion under Fed. R. Civ. P. 37(c) and reasonable expenses incurred in connection with the Motion under Fed. R. Civ. P. 37(c)(1)(a). *Id.* at 7. In response, Defendant contends that the Motion is moot because Defendant provided the transcript on October 28, 2013, the same day Plaintiff requested the information from Defendant via email and filed its Motion. [Doc. 53] at 3–4. Defendant further argues that its conduct is not sanctionable under either NMRA 1-074, which controls Plaintiff's administrative appeal by the parties' stipulation, or Fed. R. Civ. P. 37(c). *Id.* at 4–9.

Plaintiff's Motion as to the September 24, 2013 transcript is moot. Defendant produced the transcript to Plaintiff via email the same day Plaintiff filed its Motion. [Doc. 53] at 2 n.1, 3–4. Thus, Plaintiff's Motion as to the transcript will be denied as moot.

Plaintiff's request for sanctions, including mandatory exclusion and reasonable expenses, will also be denied. Sanctions are not warranted under NMRA 1-074. Nor are they appropriate under Fed. R. Civ. P. 37(c), which provides for mandatory exclusion and discretionary payment of reasonable expenses. Defendant's failure to provide the September 24, 2013 transcript was a "mistake or error." Memorandum Opinion and Order [Doc. 70] at 4. Defendant was thus substantially justified in failing to provide the transcript, and mandatory exclusion under Fed. R. Civ. P. 37(c)(1) is not warranted. The Court further declines to order payment of reasonable expenses under Fed. R. Civ. P. 37(c)(1)(a) for the same reason.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Compel and for Sanctions [Doc. 48] is **DENIED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge